IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3620 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

KOTADA SEVA SAHAKARI MANDALI LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

==========

Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 4.
MR AMAR D MITHANI for Respondent(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/07/2006

ORAL JUDGMENT

In the present petition, the petitioner Co-operative Society is challenging the order dated 30.10.2004 passed by the State Government in exercise of the revisional power under Section 155 of the Gujarat Co-operative Societies Act (herein after refereed to as the said Act).

Short facts leading the present petition are as follows;

1. The petitioner-society having its field of operation

in the village Dhansol, Tal.Kotada, District Banaskantha applied for registration under Section 4 of the said Act. The District Registrar passed an order dated 16.08.1996 granting registration to the petitioner society. The respondent No.5 herein, however, challenged the said order before the Appellate Authority i.e. Additional Registrar (Appeals). The Additional Registrar (Appeals) partly allowed the appeal by his order dated 09.10.1996. The request of the respondent No.5 herein for granting registration in favour of the said co-operative society was ordered to be reconsidered whereas the registration of the petitioner society, was not disturbed.

2. Respondent No.5 preferred revision application before the State Government being aggrieved by an order dated 09.10.1996 passed by Additional Registrar (Appeals). The State Government by an order dated 19th April, 1997 was pleased to allow the revision application preferred by Respondent No.5 in toto. The Registration of the petitioner society granted by order dated 16.08.1996 was cancelled and the respondent No.5 society was ordered to be registered.

3. The petitioner therefore approached this Court, challenging the said decision of the State Government by filing a petition being Special Civil Application No.3726 of 1997. Eventually, said petition came to be disposed of by the learned single Judge of this Court by an order dated 11th February, 2003. The learned single Judge was pleased to make certain observations and eventually directed that the State Government should pass fresh order as regards the request of the petitioner to grant registration to the society.

4. It was pursuant to this order passed by the High Court that State Government passed its impugned order dated 30th October, 2004.

5. By the said order, the State Government refused to grant registration to the petitioner society and ordered that the order of registration dated 16.08.1996 shall stand quashed.

6. It is this order that the petitioner has challenged in the present petition. Appearing for the petitioner, learned advocate Mr.P.K.Jani

submitted that the impugned order is illegal and unlawful. It was contended that petitioner society was granted registration earlier in point of time. Said registration was granted by the Additional Registrar on 16.08.1994. Respondent No.5, therefore, could not have been registered since the registration of the petitioner was earlier in point of time. It was next contended that the State Government exceeded its powers and traveled beyond the parameters laid down by this Court in its judgment dated 11.02.2003 passed in Special Civil Application No.3726 of 1997. It was next contended that the State Government also accepted that petitioner society is in existence and is functioning. In that view of the matter, there was no scope for cancellation of the registration of the society. Even if, it was found that operation of the petitioner society in certain field was not to the level of satisfaction, the same cannot give rise to cancellation of the registration.

7. It was next contended that Government itself has been granting the registration to more than one society in the same village. In the present case, therefore to suggest that two societies cannot co-exist, is not proper.

8. It is next contended that even as per the Government policy circulated through its G.R. Dated 27.03.2003 more than one society in the same village is not to be permitted, in such a case also, it would be respondent No.5, which should have been denied registration and not the petitioner.

9. It was also contended that the State Government exceeded its powers under Section 155 of the said Act and under the revisional powers, the State could not have passed the impugned order since no illegality or material irregularity was pointed out.

10. On the other hand learned advocate Shri Harin Raval for respondent No.5 supported the impugned order. He pointed out that the learned Single Judge has in her Judgment dated 11.02.2003 made certain observations. It was pointed out that within the parameters of these observations the State Government had to reconsider the question of registration of the petitioner society. He pointed out that question of registration of respondent No.5 society has achieved finality. He also submitted that impugned order records valid reasons for rejection of the request of the petitioner for registration. In short, he

supported the order passed by the Government.

11. The learned AGP Shri Gori appearing for the State also supported the said action. He pointed out that the detailed and elaborate reasons have been given.

12. Having heard the learned advocates appearing for the parties, I find that learned single Judge has in her order dated 11.02.2003 come to certain conclusions which are relevant for our purpose to take note of. It was specifically observed that the petitioner had not challenged the registration granted in favour of the present Respondent No.5. It was also observed that the provisions of Section 20 of the said Act cannot be pressed in service since the same apply to case for cancellation of registration and in the present case cancellation has been ordered in view of the challenge to the registration granted under Section 4 of the said Act. The suggestion made by learned advocate for the petitioner that in view of the passage of time, existence of 2 society in the same village for the same objects may be feasible was recorded. In that view of the matter proceedings were remanded to the State Government for reconsideration. The Government was required to take into consideration existing circumstances, the

number of members of the petitioner society etc. The learned Judge was also pleased to observe that keeping in view of the registration of the two societies operating in the same area for the same object not may be feasible in the same village. Such registration may cause rivalry, which defeats purport of the Act.

13. It can thus be seen that the issue of registration of Respondent No.5 herein had reached finality. As held by the learned Judge of this Court, the same was never under challenge in the earlier round of litigation also. In fact, learned Judge was though of the opinion that two societies in the small village operating in the same filed may not be feasible, however, considering the averments of the petitioner before the Court that in the passage of time existence two societies has become feasible, the learned Judge was prompted to remand the proceedings before the State Government for its reconsideration.

14. In view of the above parameters, the State Government was required to re-consider the entire question. While doing so, the State Government has given elaborate reasons to come to the conclusion

that registration of the petitioner society cannot be sustained. It is observed in the impugned order that the society had made sales only to the extent of Rs.72,000/- of fertilizers. Other than that no other activity was carried out. No sale of seeds has been achieved though license was granted in the year 1996. The society has not been able to disburse loans to its members. Government also found that there was attempt to inflate the membership strength of the society. It was also observed that in the respondent No.5 society, there were 187 members which was substantially larger in number than the petitioner society and it was found that it is not possible to permit 2 societies in the village to operate in the same area of operation.

15.I find that the State government has not committed any error and no interference in exercise of powers under Article 226 of the Constitution of India is called for. There was material on record to permit the State Government to draw its conclusions which are found in the impugned order. No rebuttal evidence is produced on record to suggest that the conclusions are not based on material on record.

16. The contention of the petitioner that the

registration of the petitioner society was earlier in point of time and the contention that there was no occasion for the cancellation of the registration cannot be accepted. The registration of the petitioner society was under challenge and the order dated 16.08.1994 was at large before the higher authority. In that view of the matter, it was registration order, which was being questioned and neither the Appellate Authority nor the State Government was examining the question of cancellation of registration of the petitioner society.

17. The contention that the State Government travelled beyond the parameters laid down by this Court also cannot be accepted. The State Government was required to be considered whether it was feasible to permit two societies in the same village to operate in the same field. The question of registration of respondent No.5 society has achieved finality. The learned Single Judge was of the opinion that in a small village, two societies operating in the same field may not be feasible. It was only on account of the assertion of the petitioner before the Court that, with passage of time, it may be possible to permit two societies to operate in the same field

that this Court remanded proceedings before the State Government for reconsideration. The inquiry before the Government, therefore, was whether it was feasible to permit registration to the petitioner also in addition to the registration already granted to respondent No.5 society.

18. The question of permitting more than one society to operate in the same area has to be judged on the factual parameters arising in each case and if there are instances of more societies than one operating in the same field, the same by itself cannot justify the demand of the petitioner dehors material on record.

19. In view of the above discussion, the contention that if at all in view of the Government Resolution, the registration of respondent No.5 society should have been recalled also cannot be accepted. As noted earlier, the respondent No.5 has achieved finality and said issue was not before the Government. I am also unable to accept the contention of the petitioner regarding lack of powers of the Government under Section 155 of the said Act. The State Government has considered the issue as remanded by this Court and within the parameters of the order dated 11.02.2003, it was the desire of the

Court that the State Government takes into consideration the relevant material and come to a fresh conclusion that such conclusion therefore, cannot be questioned on the ground of lack of power of the State Government. Even otherwise, I do not find any limitation in the provision of Section 155 of the said Act and it was open for the State Government to pass appropriate order in this regard.

20. In the result, petition fails and is hereby rejected. Notice discharged.

(Akil Kureshi, J.)

ashish//